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KEY AMENDMENTS TO THE INDIAN ACT - A SUMMARY


INTRODUCTION

The proposed amendments to the Indian Act are drafted in technical legal language, as required by the legislative process. To facilitate public understanding of the amendments, this guide summarizes briefly the contents of the main proposals. Those interested in analyzing the amendments in detail should refer to the Bill tabled in the House of Commons.

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PART A - KEY CONCEPTS

To begin, it is useful to clarify certain important terms which are often misunderstood:

Indian Status: This term refers to registration under the Indian Act. Federal policies and programs for Indians relate primarily to persons with Indian status under the Act.

No matter where they live in Canada, status Indians are eligible for post-secondary education assistance provided by the Department of Indian Affairs and Northern Development, and for non-insured health services provided by the Department of National Health and Welfare.

Band Membership: This term refers to inclusion among the members of an Indian band recognized by the federal government. At present, virtually all status Indians are band members.

Band membership confers the right to hold land on reserve and to share in the assets of the band. In practice, participation in the active life of a band normally depends on residence on reserve.

Residence on reserve: This term simply refers to living on an Indian reserve. In most cases, participation in band elections requires that a band member be "ordinarily resident on reserve". Band residence also provides access to basic education, health, welfare and other services provided or financed by the federal Department of Indian Affairs and Northern Development. Access to residence on reserve is often limited by the amount of available housing. At present about 30% of status Indians do not live on reserve.

Enfranchisement: This term refers to a process in the Indian Act whereby an Indian gives up his registration under the Act and band membership. By doing so, the enfranchised person becomes entitled to receive a per capita share of the capital and revenue funds held by the federal government for the band. The term originated at a time when giving up Indian status was the only way for Indians to gain the right to vote in federal and provincial elections.

PART B - REGISTRATION (STATUS) UNDER THE INDIAN ACT

Present Act

- o The federal government maintains an Indian Register, which lists all those entitled to Indian status under the Indian Act.
- o Section 11 defines who is eligible. Basically entitlement depends on being:
 - (a) a male descendant of persons recognized by the federal government as Indians in 1874 or later - section 11(1)c; or
 - (b) the wife or child of such a male descendant - sections 11(1) d, e and f.
- o Section 12 excludes from registration such people as:
 - (a) Indian women who marry non-Indians - section 12(1) b
 - (b) at age 21, persons whose mother and paternal grandmother were not born Indians - section 12(1)(a) iv
 - (c) descendants of persons allotted "half-breed land or money scrip" (i.e. Métis) - section 12(1)(a) ii
 - (d) persons who are enfranchised - section 12(1)(a) iii
- o Illegitimate children are treated differently depending on whether their mother or father is an Indian - sections 11(1)e and 12(2)

Proposed Amendments

- o Since the whole registration scheme is based on sexual discrimination, it has to be replaced. Under the amendments the following would be eligible for registration as status Indians:

- (a) - those registered when the amendments come into force,
 - members of groups later declared by the Governor-in-Council to be bands for the purposes of the Act,
 - persons who lost status for such reasons as marrying a non-Indian,
 - families that were enfranchised unfairly under S 109 (eg. as a result of joining the armed forces, or to get a job),
 - persons both of whose parents are included in (a) or (b);
 - (b) - persons one of whose parents is included in (a)
- o The effect of this scheme is essentially:
- (a) to treat men and women equally
 - (b) to treat children equally whether they are born in or out of wedlock, and whether they are natural or adopted
 - (c) to prevent anyone from gaining or losing status through marriage
 - (d) to restore Indian status for those who lost it through discrimination or unfair enfranchisement
 - (e) to permit first-time registration of the first generation descendants (and in some cases descendants of subsequent generations) of those whose status is restored, and of illegitimate children of at least one Indian parent, regardless of their date of birth.
- o The federal government will continue to maintain the Indian Register. Those who are recorded in the Indian Register when the amendments come into force will continue to be recorded there. Those whose status is to be restored or who are eligible to be registered for the first-time must apply to the Registrar to be recorded.
- o Three categories of persons are excluded from registration under the new provisions:

- (a) women who gained status through marriage, and subsequently lost it (eg. through a subsequent marriage to a non-Indian);
- (b) children of such women if their father was not a registered Indian; and
- (c) persons who voluntarily remove their name from the Indian Register in the future

PART C - BAND MEMBERSHIP

Present Act

- o Registration of Indian status automatically confers band membership in virtually all cases - sections 11 and 12.
- o Bands have no statutory role in the determination of band membership.

Proposed Amendments

- o Those who lost band membership in the past through discrimination or unfair enfranchisement can have it restored on application
- o Bands will thereafter be able to determine their own membership in accordance with their own membership rules
- o The Indian Act will require band membership rules to respect two principles:
 - (a) band membership rules are approved by a majority of band electors; and
 - (b) existing band members and those who are eligible to have band membership restored can not lose their entitlement to band membership because of something that occurred before the membership rules were adopted.
- o Bands may opt to leave control of their band membership with the federal government, in which case Indian status will confer band membership as under the present Act
- o Two years after the coming into force of the proposed amendments, any bands which have not implemented their band membership powers will be subject to the status equals membership regime - one result would be that first generation descendants of those restored to band membership would then become band members automatically if they are registered under the Act.

- o Bands could still assume membership powers after the 2 year period, but the rights of existing band members would be protected
- o As an interim measure during the first 2 years (or until a band adopts its own membership rules) only people born after the amendments come into effect, both of whose parents are members of the same band, will be enroled as band members
- o A woman who marries a member of another band will no longer automatically become a member of her husband's band. Transfers between bands will still be possible if the receiving band agrees - section 12.
- o Bands will gain new by-law powers under section 81 to regulate:
 - (a) the residence of band members and others on reserve; and
 - (b) the rights of spouses and children of band members who reside on reserve.

In any case, however, where band members reside on reserve, their dependent children will be able to reside with them - section 18.1.

- o Persons regaining band membership who previously received per capita pay outs from band capital and revenue accounts will not be able to benefit from current distributions of band funds until the amount foregone equals the amount they received earlier, plus interest - section 61(2).
- o Since some people accepted into band membership under band rules may not be status Indians, various sections of the Act will be made to apply to any band member, whether or not he is an Indian. The sections in question are those which relate to the community life of the band (eg. land holdings).

Sections relating to Indians as individuals (eg. those dealing with wills or taxation of personal property) will not be included

PART D - ENFRANCHISEMENT

Present Act

- o An enfranchised person is "deemed not to be an Indian" - section 110.
- o A person may be enfranchised if capable of "assuming the duties and responsibilities of citizenship", and capable of supporting himself - section 109(1).
- o The wife and unmarried minor children are automatically enfranchised with their husband or father - section 109(1).
- o An entire band may be enfranchised if "capable of managing its own affairs as a municipality" - section 112.
- o An enfranchised person is entitled to receive one per capita share of band capital and revenue accounts - section 15(1).

Proposed Amendments

- o Sections 109 to 113 will be replaced with a simple provision enabling a person to remove his name from the Indian Register, and thereby cease to be an Indian as defined by the Indian Act.
- o Such individuals will not be entitled to re-register at a later date.
- o Bands will be able to pass by-laws to govern whether or not to make per capita payments from band revenue accounts on removal from the Indian Register; there will be no statutory right to such payments

OTHER AMENDMENTS

Present Act

- o Illegitimate and legitimate children are treated differently regarding descent of property - section 48[13] and [14].
- o The protest provisions in section 9 are outmoded.
- o Males and females, as well as illegitimate and legitimate children, are treated differently regarding spousal desertion - section 68.
- o A truant officer can enter an Indian dwelling without a warrant - section 119.

Proposed Amendments

- o Illegitimate and legitimate children will be treated equally regarding descent of property
- o Males and females, as well as illegitimate and legitimate children, will be treated equally regarding spousal desertion
- o The protest provisions updated
- o A warrant required by truant officer